

**MINUTES**  
**of the**  
**FIFTY-FOURTH MEETING**  
**of the**  
**PUBLIC SCHOOL CAPITAL OUTLAY OVERSIGHT TASK FORCE**

**October 20, 2015**  
**Room 307, State Capitol**  
**Santa Fe**

The fifty-fourth meeting of the Public School Capital Outlay Oversight Task Force (PSCOOTF) was called to order by Senator John Sapien, chair, on October 20, 2015 at 10:20 a.m. in Room 307 at the State Capitol in Santa Fe.

**Present**

Sen. John M. Sapien, Chair  
Rep. Dennis J. Roch, Vice Chair  
Paul Aguilar  
Dr. Carl Foster  
Tracy Hofmann  
Sen. Stuart Ingle  
Rep. Larry A. Larrañaga  
Sen. Mary Kay Papen  
Sen. Cliff R. Pirtle  
Debbie Romero, designee for Tom Clifford  
Sen. Benny Shendo, Jr.  
Allan Tapia  
James P. White

**Advisory Members**

Rep. Eliseo Lee Alcon  
Sen. Howie C. Morales  
Rep. Patricio Ruiloba  
Sen. William P. Soules  
Sen. Mimi Stewart  
Sen. Pat Woods

**Staff**

Raúl E. Burciaga, Director, Legislative Council Service (LCS)  
Sharon S. Ball, Researcher/Drafter, LCS  
Jeff Eaton, Legislative Fiscal Analyst, LCS  
Michelle Jaschke, Researcher, LCS

**Guests**

The guest list is in the meeting file.

**Absent**

Rep. Sharon Clahchischilliage  
Dr. Lisa Grover  
Rep. James Roger Madalena  
Rep. W. Ken Martinez  
T.J. Parks  
Mike Phipps  
Sen. Sander Rue  
Sen. John Arthur Smith  
Jerry Stagner  
Rep. Don L. Tripp

Sen. Daniel A. Ivey-Soto  
Rep. D. Wonda Johnson  
Rep. Patricia Roybal Caballero  
Sen. John C. Ryan  
Sen. William E. Sharer  
Rep. James E. Smith

## **Handouts**

Copies of all handouts are in the meeting file.

## **Tuesday, October 20**

### **Welcome and Introductions**

The chair welcomed task force members and guests and asked that members introduce themselves.

### **Approval of August 11 and September 16, 2015 Minutes**

Upon a motion duly made and seconded, the minutes for the August 11, 2015 meeting were approved with the following correction: Representative Ruiloba's name was moved from the members' list to the advisory members' list. Upon a motion made and duly seconded, the minutes for the September 16, 2015 meeting were approved.

### **Funding Formula Subcommittee Report**

Senator Stewart, Funding Formula Subcommittee chair, and Dr. Foster, Funding Formula Subcommittee vice chair, reported that earlier in the morning, subcommittee members heard a presentation from Robert Gorrell, director, Public School Facilities Authority (PSFA), and his staff on demographic and other data to be considered as the subcommittee continues to examine funding formula equity issues. The subcommittee also approved execution of a contract with staff at the University of New Mexico's (UNM's) Bureau of Business and Economic Research (BBER) and participated in a conference call with Dr. Jeff Mitchell, BBER director, and Dr. Gwendolyn Aldrich, BBER research scientist. The research team, which consists of Dr. Mitchell and Dr. Aldrich, reported some progress with the research project but indicated that they have been having trouble acquiring data from the Public Education Department (PED) and the Department of Finance and Administration (DFA). Dr. Mitchell indicated that the BBER has had to make Inspection of Public Records Act requests to both agencies. Subcommittee members expressed concern that the agencies have not been more forthcoming in providing the specific information that the BBER researchers need. In response to subcommittee discussion and questions, Dr. Mitchell indicated that he and Dr. Aldrich are not able to use data that are available on agency websites, such as the DFA's Local Government Division's "Certificates of Property Tax Rates" and the PED's "2014 Mill Levy Rates", because these data are sorted by county and not by school districts. The subcommittee noted that some school districts are located in more than one county and that some counties include more than one district.

Senator Stewart indicated that the first phase of the study (the creation of a spreadsheet model of the existing funding formula for the period from 2007 through 2015) to calculate public school facility funding distributions based on the existing formula using independently collected data will likely not be delivered before the 2016 legislature and that the PSCOOTF will need to continue the study during the 2016 interim.

Task force members continued their discussion expressing concerns that requests for data from state agencies requested by a legislatively authorized body are not met in a more timely manner. They also discussed issues related to adequacy and problems created by districts with substantial property tax bases and whether a change to the formula would make any difference.

The chair directed members' attention to a copy of a news story published in the *Gallup Independent* on October 14, 2015 that reports on a status conference in district court in Gallup on Tuesday, October 13, 2015, at which Bob Rosebrough, attorney for the Gallup-McKinley County School District (GMCSD), told District Judge Louis DePauli, that while the state has made progress in addressing funding disparities, the GMCSD still faces great inequities. The chair noted that the article is local coverage of a local issue.

### **Update: Broadband Deficiencies Correction Program Implementation**

Kendra Karp, chief information officer, PSFA, and Ovidiu Viorica, project manager, Broadband Deficiencies Correction Program (BDCP), PSFA, provided the task force with a presentation on the progress of implementing the BDCP that was funded by the 2014 legislature with passage and enactment of Laws 2014, Chapter 28, which provided \$10 million a year from the Public School Capital Outlay Fund over the five-year period from 2014 to 2019. The panel, which included Darryl Ackley, secretary, Department of Information Technology (DoIT), and Michael Archibeque, chief information officer, PED, discussed the collaboration between the legislature and executive branch agencies on the program's implementation.

Directing task force members' attention to slide 2 on the presentation handout, Mr. Viorica said that the graphic is a good reference since it displays what the BDCP covers under Senate Bill 159 (2014), a bill sponsored by Senator Stewart and Senator Jacob R. Candelaria to provide funding for a program to determine broadband deficiencies throughout school districts statewide. He said that it also clearly defines what is excluded. The first two panels are circled in green to indicate that they are covered by this program. The internet service providers section is the "external pipe" that brings broadband to the school districts; the middle section is labeled "internal equipment" because this program will fix network issues that interfere with the delivery of adequate broadband within schools and districts. Mr. Viorica explained that the Federal Communications Commission (FCC) has adopted goals for 2018 of one megabit per second (Mbps) for internet access per student and staff member. For the wide area network transport, the goal is to have capacity scalable to 10 gigabits per second per school in preparation for an increase in required bandwidth.

Mr. Viorica explained that slide 4 is a graphic provided by the EducationSuperHighway (ESH), a national organization with which New Mexico is partnering, and reflects the three main components of broadband and how the current conditions in New Mexico schools compare to the FCC goals. According to ESH data: (1) on the operational side, districts do not purchase enough internet access to support the needs of their students; (2) in terms of what they are calling the external pipe, New Mexico schools do not have fast enough connections to a district hub; and (3) in terms of external equipment, 92% of schools do not have infrastructure for Wi-Fi connections.

Mr. Viorica pointed out that, according to the ESH, internet access costs have a wide variation across the state. Costs range between \$4.00 and \$25.00 per Mbps (and above). Some districts are doing well; for example, the Clovis Municipal School District is at \$4.00 currently. In an aggregated model, the state's cost goal for internet purchase could be \$1.00 per Mbps per month. The cost to deliver the service to the district point of presence will add to this purchase cost. As an example, he said that Network Nebraska's 2014 internet purchase cost is \$1.38, and UNM's current internet purchase price is \$2.00.

Continuing, Ms. Karp showed task force members four new possible service models for all K-12 schools at one Mbps per student per staff member, including a state-built and -operated model; a state-built and -operated open access aggregation network using private sector service providers to connect districts to the aggregate network; a leased open access private sector aggregation network with private sector service providers connecting districts to the aggregate network; and a managed service network for all participating schools and districts probably leveraging existing networks. She said that capital costs would be the least for the latter two models with operational costs as yet uncertain depending on the results of using the procurement process. She pointed out that there is no difference in capital cost with service levels of 100 kilobytes per second per user to one Mbps per user. She noted that through the procurement process, fiber will be discovered in areas that will benefit schools, which would be more cost-effective. The procurement process will most likely reveal this type of information.

Mr. Viorica directed members' attention to slide 10, which illustrates a case study of the Central Consolidated School District (CCSD). He explained that this case study is a good example of an area that needs help. The CCSD's current broadband services are costly and difficult to manage, and it appears that the district is receiving only a fraction of what it is actually paying for. The graphic shows that a circuit that is about 400 miles long is used to connect Kirtland to Shiprock through a roundabout path for two sites that are only 16 miles apart. It is clear that this approach is not cost-effective; however, working with the area providers for the last six to eight years did not yield a solution.

Continuing, Mr. Viorica noted that slide 12 is a very straightforward example of the way in which the state's 10% matching funds work with the FCC. For example, if it costs \$100,000 for fiber construction that will support the most cost-effective service over a reasonable period established by the district, E-Rate will pay for 80% (\$80,000) of the cost, and if the state pays for 10% of the build (\$10,000), the FCC will match the 10% (subtracting another \$10,000), totaling a cost of zero for the district. He explained that it is uncertain how long this FCC funding opportunity will last, so he recommends taking full advantage of it as expeditiously as possible.

Mr. Viorica acknowledged a great need to upgrade internal networks in individual schools. Because of the survey work approved by the Public School Capital Outlay Council, the magnitude of the problem is obvious. For example, the most significant equipment findings include the fact that 96% of schools require basic hardware upgrades, especially for switches, and

92% of schools require wireless network upgrades. Most of these upgrades are likely to be needed every five years. The PED and DoIT are working to develop sustainability recommendations to decision-makers regarding the funding needed on a regular basis for service, maintenance and operations and to refresh equipment. E-rate Modernization Order funding is capped at \$150 per student over five years for internal equipment (an estimated \$42 million for New Mexico). Some districts have already taken advantage of this funding availability, yet there is an estimated \$39 million still available for New Mexico schools right now.

Secretary Ackley and Mr. Archibeque spoke about the successful collaboration between the executive agencies and the legislature. During their discussion, task force members discussed the importance of using the available appropriated funds to leverage as much federal and other funding as possible.

Members noted a copy of an *Albuquerque Journal* report in their meeting folders on a news conference that Governor Susana Martinez held in the Bernalillo Public School District on October 16, 2015, during which she discussed a plan that her administration and the ESH will be implementing over the next three years.

Members were particularly interested in the following explanation in the article: "Using 49 million set aside by a 2014 state appropriation for school Internet improvements and using federal funds set aside for subsidizing school Internet bills, Martinez said every public school in the state will have high-speed Internet access by the start of the school year in 2018". Task force members asked the panel if the article is referring to the plan that is before the task force today. Panel members indicated that the article does refer to the plan under discussion.

Members expressed a great deal of concern that the nearly \$50 million the governor refers to in the news conference comes from the amendments to the Public School Capital Outlay Act to establish an education technology deficiencies correction program and the appropriation from the Public School Capital Outlay Fund to be expended over the five years after the bill was signed, which were legislative initiatives. Members expressed a number of concerns that the 2014 bill sponsors and the Legislative Education Study Committee endorsement were not credited appropriately.

### **Report: Public School Capital Outlay and Federal Impact Aid Funding**

Paul Aguilar, deputy secretary, finance and operations, PED, began his presentation by indicating that, in his opinion, the title of the presentation as represented in the task force agenda is incorrect because federal impact aid funding, as it is used in New Mexico, relates only to sources of operational — not capital outlay — funding. He reminded task force members that New Mexico enacted the Public School Finance Act in 1974 to equalize financial opportunity at the highest possible revenue level and to guarantee each New Mexico public school student equal access to programs and services appropriate to the student's educational needs regardless of geographic location or local economic conditions.

Deputy Secretary Aguilar emphasized that funding distributed through the funding formula is "noncategorical"; i.e., funding is not earmarked for specific programs. These decisions are made by local boards of education according to local priorities within statutory and regulatory guidelines.

He continued, pointing out that rather than requiring school districts to be funded almost entirely through local sources — which vary significantly from district to district depending on local property tax wealth per student — the formula takes an offset for a portion of local resources collected. The net effect is that per student funding across the state is generally equalized.

Deputy Secretary Aguilar explained that "program cost" is the total funding a school district or charter school is entitled to for funding its educational program. Because of the funding formula, the annual legislative appropriation and cost differentials reflect costs associated with providing educational services to students, all of whom have differing needs. Total program cost revenue is made up of the state equalization guarantee distribution and 75% of revenues received directly from the half-mill operational property tax levy, payments for federal property received in lieu of taxes (impact aid) and revenue generated through federal forest reserve funds.

Explaining federal impact aid payments, Deputy Secretary Aguilar explained that many local school districts include within their boundaries parcels of land that are owned by the federal government or that have otherwise been removed from the local tax rolls by the federal government, including Native American tribal lands, national laboratories and U.S. Bureau of Land Management lands, among others. In some states, these school districts face special challenges, e.g, providing an education for children associated with these lands with less revenue than is available for other school districts with taxable lands. In New Mexico, these disparities are mitigated because of the equalization components of the funding formula.

Specifically, he explained that impact aid has four components:

1. basic noncategorical payments assist local school districts that have lost a portion of their local tax base because of federal ownership of property;
2. categorical payments for children with disabilities provide additional assistance to school districts that educate children who are eligible for services under the federal Individuals with Disabilities Education Act in addition to basic support payments;
3. noncategorical Indian "set aside" payments help local school districts that educate students residing on federally connected lands; and
4. construction grants (which are very limited) go to local school districts that educate a high percentage of certain federally connected children to pay for the construction and repair of school buildings.

Deputy Secretary Aguilar said that each qualifying school district receives all of its impact aid payments directly from the federal government; however, current state law requires that the state use 75% of the basic impact aid payments as credits in calculating the state equalization guarantee. He emphasized that the state does not take credit for the Indian add-on, special education add-on or capital outlay grants, it only takes credit on the basic, noncategorical payments.

He went on to explain that, in order to take credit for these payments, federal law requires that the state must meet stringent requirements established in federal law. The state must verify each year to the U.S. Department of Education that its equalization formula distribution meets a 25% "disparity requirement". In what is called the "Zuni Impact Aid lawsuit", the plaintiff school districts (the Zuni Public School District, GMCSD and Grants-Cibola County School District) took issue with the wording of the federal law that establishes parameters for determining whether a state meets the criteria to be an equalized expenditures state. The plaintiffs sued the U.S. Department of Education because it makes a yearly determination of qualification for equalized expenditures. The plaintiff districts contended that the state should account for "outliers" by district, rather than by the number of students, and language in federal rules is not definite. Because outliers are distinctly possible in a state with districts ranging in size from nearly 90,000 to fewer than 50 students, the U.S. Department of Education, with the PED participating as an intervener, contended that the number of students, rather than the number of districts, should be the qualifier.

Deputy Secretary Aguilar explained that a federal district court found in the state's favor, and the plaintiffs then appealed to the Tenth Circuit Court of Appeals, which found in the state's favor in an "en banc" hearing from the Tenth Circuit Court of Appeals, which upheld the district court's finding on a 6-6 tie. Thus, the federal district court's ruling stood. Subsequently, the U.S. Supreme Court found that the federal secretary of education is correct in permitting the state to consider the number of school district students, rather than the number of districts.

In response to task force discussion and questions, Deputy Secretary Aguilar explained that New Mexico has been taking credit for about \$50 million a year in federal impact aid basic, noncategorical funding since the 1980s. If the courts had found in favor of the plaintiffs, the state would have had to make up for the \$50 million in credits to avoid creating "loser" districts while the impact aid districts received a "windfall" in additional funding proportional to the number of qualifying students in the district. In response to additional discussion, Deputy Secretary Aguilar explained that school districts must apply for impact aid on a yearly basis and qualify to receive basic support payments if the number of federally connected children enrolled in the district totals at least 400 children or at least 3% of the school district's average daily attendance. Ms. Ball added that, currently, 28 of New Mexico's 89 school districts qualify for impact aid basic payments, with the Zuni Public School District qualifying for the largest proportional percentage since the district's boundaries coincide exactly with the reservation's boundaries.

Ms. Ball added that changes made to the funding formula in 2001 allow districts to use a 25% credit for both operational and capital outlay expenditures. She said that, before that time, the state took credit for 90% of locally generated funding (including federal payments in lieu of taxes) and required districts to use the remaining 10% for capital outlay expenditures.

### **Discussion: Portables, Prototypical Schools and State Gross Square Footage**

Mr. Gorrell said that the two largest capital assets in New Mexico are its roads and its schools, valued at about \$20 billion each. Capital assets in general have three strategic variables relating to their sustainability:

1. adequate funding available to replace assets and do sufficient maintenance to ensure the expected life of the assets;
2. affordability in terms of the total size of the assets that available funding can support; and
3. maintenance effectiveness in terms of capabilities to accomplish sufficient and appropriate maintenance within available funding.

Mr. Gorrell stated that, if the state's public schools were "sized right", the annual cost per student should be approximately \$850 in amortized facility costs and \$900 in operational costs (including heating, cooling, cleaning and routine maintenance), for a total of \$1,750 per student per year, compared to the current estimated total of \$2,570 per student per year.

Continuing, Mr. Gorrell talked briefly about the use of portable classrooms in public schools. He directed members' attention to a description of a study reported in the *Journal of Educational Administration* (vol. 17, number 3, 2009, pp. 290-304) and mentioned that, if members are interested in delving deeper into the subject, the entire study is available. He said that, according to this study, the use of portable classrooms has no significant impact on teacher perception, teacher morale, teacher job satisfaction, student achievement and student behavior. He also noted that, in his experience, some teachers prefer portable classrooms because they can control the classroom's temperature and they are not subject to as many interruptions as their colleagues in brick-and-mortar classrooms. He noted that, while portables cannot totally replace brick-and-mortar buildings, they can be used strategically for long-term maximization of available funding. He said that portables can maximize districts' and statewide utilization by avoiding overbuilding and therefore minimizing the ownership cost of facilities.

Regarding prototypical schools and the design cost debate, Mr. Gorrell noted that the best school facilities designs are contextual because every community has a different emphasis on learning programs, different weather and even differing site conditions. He asserted that savings from design avoidance are generally not a good return on investment. With their only function as supporting teaching and learning, facilities must be specifically designed to optimize performance, including product quality, minimized operational costs and maximized expected life of a building. The total cost of constructing a facility is estimated to be only 2% of the total whole-life costs associated with a facility.



Mr. Gorrell suggested that, for those interested in a more detailed analysis, he had provided task force staff with several other studies on these issues:

- "Life-Cycle Cost Analysis" from the National Institute of Building Sciences;
- "Public School Principals Report on Their School Facilities: Fall 2005", a statistical analysis report by the National Center for Education Statistics (NCES); and
- "Prototype School Designs: Can Prototypes Be Used Successfully?", a research publication from the Council of Educational Facility Planners International.

All materials are available in the meeting file.

### **Discussion: Identifying Facilities Spending Through Cost Codes**

Because several task force members had engagements in the late afternoon and early evening, members agreed by consensus to end the meeting at approximately 3:00 p.m. Mr. Gorrell indicated that he and his staff would do some more research on the presentation on variables in maintenance costs and provide the presentation at the November meeting. He agreed to focus on the identification of facilities spending through cost codes portion at today's meeting.

Mr. Gorrell noted that in the past decade, the state has invested nearly \$20 billion in public school facilities. He stressed that effective ownership of these facilities is necessary to protect the state's multi-billion dollar investment into the future. Sustaining the current level of the condition of public school facilities will require a school district focus on maintenance to extend the life of facilities. He asserted that knowing how much of their funding (and from what sources) school districts spend on facilities compared to what should be spent is key to improving the life and function of school facilities.

Mr. Gorrell continued, stressing that policymakers need to have the statewide establishment of facilities cost codes to capture and reflect school district expenditures related to capital and noncapital spending. He emphasized that spending on routine maintenance is one of the first budget items to be reduced when educational funding is reduced or does not keep up with increases in the cost of living. He opined that inadequate spending on maintenance is a result of an overall lack of facility management know-how. He pointed out that development and implementation of facilities cost codes that adequately reflect spending on maintenance functions would provide comparable metrics, which would lead to better budgeting and spending decisions.

Mr. Gorrell explained that current cost codes for reporting on facilities maintenance expenditures do not capture capital maintenance costs that provide longer-lasting facilities, such as expenditures for re-roofing, upgrades to heating, ventilating and air conditioning systems and infrastructure building improvements. He also said that current cost codes do not differentiate between preventive routine maintenance expenditures and emergency (or reactive) maintenance, which he asserted is about three times more expensive than preventive routine maintenance.

Mr. Gorrell said costs that should be monitored in order to protect taxpayers' multi-billion dollar investment in public school facilities and include the following costs related to:

1. planning: capital expenditures must be well-planned to be cost-effective and to allow districts to gain voter support for mill levies and bond issues. Mr. Gorrell opined that while planning expenditures are relatively low cost, they are some of the most important expenditures for responsible ownership;
2. acquisition: Mr. Gorrell explained that besides the acquisition of land and facilities, these expenditures include "re-obtaining" through facility renewal;
3. maintenance: Mr. Gorrell explained that maintenance includes all work required to keep a facility fully functional and continually utilized for its expected life and intended purpose. He noted that a facility addition extends the life of the original facility; and
4. operations: Mr. Gorrell explained that operations expenditures include all costs to keep a facility clean, sanitary and tidy so that its occupants are comfortable, healthy and productive. He added that operational expenditures include costs for utilities, snow removal, support services and even demolition, such as weed removal.

Mr. Gorrell said that for purposes of classifying expenditures and budgeting, all school facilities-related activities should fall into one of the four categories he just described. Mr. Gorrell explained that using nonmandatory NCES codes that already exist within the NCES accounting code structure will ensure the identification of adequate and appropriate facilities ownership costs.

Directing members' attention to the presentation materials, Denise Irion, chief financial officer, PSFA, explained the funding definitions crosswalk table that the PSFA is proposing to allow for planning, acquisition (or procurement), maintenance and operations expenditures to be captured within existing, optional NCES account codes. A copy of the crosswalk table can be found in the meeting file.

Task force members discussed the PSFA proposal at length and asked what action the PSCOOTF might take to accomplish the closer tracking of school district maintenance and operational, planning and acquisition activities. Task force members generally agreed that proposing legislation to require cost codes would not be practical since accounting cost codes are primarily a ministerial, rather than a policy, function of government. In response to member discussion and questions, Mr. Gorrell indicated that, at the present time, the PSFA has not been able to schedule a meeting with PED staff to discuss development and implementation possibilities. Members also discussed the possibility of introducing a memorial requesting that the PED, PSFA and other interested stakeholders examine the proposal and report the results to the PSCOOTF during the 2016 interim. Senator Sapien noted that, at this point in the meeting, no one from the PED was present to answer task force questions about working together on possible adjustment to the uniform chart of accounts, and he suggested that perhaps the task force could continue this discussion with a PED representative at the November meeting.

**Adjournment**

There being no further business before the task force, the fifty-fourth meeting of the PSCOOTF adjourned at 2:58 p.m.